
Notes and Brief Reports

Developments in the Equalization of Treatment of Men and Women Under Social Security in the Federal Republic of Germany*

The equal treatment of men and women under social security has been an issue of major interest in the Federal Republic of Germany for a number of years. Basically, the discussions have centered on three areas of social security: (1) Earnings sharing provisions between husband and wife for social security purposes; (2) equalization of treatment of survivors; and (3) gratuitous social security credits for parents during periods of child-rearing.

Earnings sharing for both public and private pension plans has been in effect in Germany since 1977.¹ The concept is based on the theory that pension entitlements acquired during a marriage should belong equally to both spouses. Thus, following a divorce, the divorced spouse with the lower pension on his or her own work record retains some rights to the higher pension of the other spouse. If the pensions were earned during the marriage, the amounts are equalized. In the first 5 years that these provisions were in operation (1977–82), transfers of pension rights occurred in some 272,000 cases.

Legislation enacted July 15, 1985,² introduced major changes in the German social security law with further regard to the equalization of treatment of men and women. Under the new law, men and women are to receive equal treatment under the survivor pension program. This is distinct from, and in addition to, any provisions for earnings sharing between husband and wife for social security purposes as provided for in the previous legislation. To limit costs of providing an increased number of survivor's pensions to widowers, there is an income test and an offset for those with high earnings or other public pensions.

The recent legislation also provides gratuitous social security credits for parents who stop work during periods of child-rearing. Gratuitous, or complimentary, social

security credits are periods of insurance (along with hypothetical earnings) credited to a person's work history for periods where the individual was, in fact, not working in covered employment. Both the worker's and the employer's share of the contributions due on these credited wages are normally paid from general revenues (as is the case for child-rearing credits) or from a specific fund, such as the unemployment insurance, sickness, or any other fund that pays for continued coverage in the retirement program for persons receiving benefits under their programs. In most cases, these periods of complimentary coverage will be increasing the retirement or survivor benefits. These new provisions will also enable a parent with credit for rearing five or more children to meet the minimum insured status requirements of 5 years and thus receive benefits at age 65 without any periods of covered employment.

This article focuses upon the changes in the German social security system subsequent to the 1985 legislation.

Equalization of Treatment of Survivors

During the past several decades, women have increasingly participated in the labor force, not just in Germany but in all industrialized nations. In the Federal Republic, women constituted 38.5 percent of the total work force in 1984. The development of, and recent changes to, survivor benefits—including protection for former spouses and widowers—respond to these changes in the work force.

When widows' benefits were instituted in Germany in 1911, the situation seemed straightforward inasmuch as the husband was the breadwinner in virtually all cases. As such, widowers' benefits were deemed unnecessary since, even if the wife predeceased him, he presumably had either his work or his own pension to sustain him. Later, with the entry of more women into the paid labor force, widower's benefits were authorized but were limited in scope and paid only in those cases where the wife had been the principal breadwinner. For the period 1957–75, a further restriction was added: Widowers also had to be disabled. While a widow was entitled to 60 percent of her husband's benefit without limitation and without regard to outside earnings or a pension of her own, the widower had to prove dependency to receive the same benefit.

In 1975 the court (Bundesverfassungsgericht) ordered the legislature (Bundestag) to rectify this gender-based inequity and provide equal treatment of men and women

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¹For more details see Appendix K, part II of the "Report on Earnings Sharing Implementation Study," Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, Committee Print WMCP: 99-4, 1985, pp. 603 ff.

²Gesetz zur Neuordnung der Hinterbliebenenrenten sowie zur Anerkennung von Kindererziehungszeiten in der gesetzlichen Rentenversicherung (Hinterbliebenenrenten- und Erziehungszeiten-Gesetz-HEZG) of July 15, 1985, BGB 1985, Part I, p. 1450, dated July 19, 1985.

under the survivor provisions of the social security law. At that time, the requirement that the widower be disabled was removed. The new law, which entered into effect on January 1, 1986 (after 10 years of planning), is the result of this court order.

Persons Affected by the New Law

The law on the equalization of treatment of men and women under social security impacts upon those surviving spouses whose income, including their own pension, falls above a specified amount **and** whose survivor pension enters into effect after 1985. For these individuals, the change affects their survivor pension only, not the pension earned based on their own work record.

For those whose pension entered into force before 1986, their survivor pensions remain unchanged. That is, those receiving a survivor pension—regardless of other pension entitlement or income—continue to receive their full survivor benefit. Others—whose eligibility for a survivor pension begins after 1985—will also be unaffected by these changes if they are not eligible for a pension on the basis of their own work history or if their monthly income, including their own pension, is less than the specified exempt amount.

Computing the Survivor Pension

The survivor pension remains at 60 percent of the deceased's pension. However, the new legislation introduces an income test. Whenever the survivor has income (including his or her own pension) above a specified exempt amount, then 40 percent of any income over the exempt amount is deducted from the survivor pension. For purposes of offset, however, numerous types of income are partially or totally excluded.

As of January 1, 1986, the exempt amount was fixed at 900 Deutschmarks (DM).³ This amount will be adjusted upwards whenever there is a general benefit increase, and at the same percentage as the benefit increase. The current exempt amount (DM 900) is slightly higher than the average retirement benefit of blue-collar workers, which was about DM 800 in 1984, but below that of white-collar workers' pensions, which averaged about DM 1,168 for that year.⁴ (This compares with average monthly wages in 1984 for blue-collar workers of DM 2,804 and DM 3,446 for white-collar workers.)

To see how a typical surviving spouse might fare under this pension reform, compute the survivor pension of a person whose (1) monthly income, including his or her own pension, is DM 2,000 and (2) whose full survivor pension is DM 1,000 per month before offset. In this ex-

ample, the following calculation would be made:

(a) Income (including own pension)	DM 2,000
(b) Exempt amount	900
(c) Excess income (a - b)	1,100
(d) Chargeable income—40 percent of excess earnings (c)	440
(e) Survivor pension before offset	1,000
(f) Survivor pension payable after offset	560

Based on this computation, the spouse would thus receive a reduced survivor pension of DM 560 a month, which when combined with other income would amount to a total of DM 2,560 a month. This amount is, as are all pensions, subject to income tax.

Although simple in theory, this offset calculation is extremely complex in practice. Problems arise since, as mentioned earlier, not all income is taken into consideration in the calculation. Moreover, even the income that falls under the test is treated differently, depending on its source. For offset purposes, the surviving spouse's own old-age pension and workers' compensation payments are counted in full as income. With regard to pensions that are included to some degree for offset purposes, pensions from special systems such as occupational funds (for example, a cooperative retirement plan for doctors) are reduced by 27.5 percent; civil servants' pensions by 37.5 percent; and pensions for miners by 25 percent.

Other chargeable forms of income are reduced by a factor that takes into account "social costs," thus giving some credit for the taxes and social security contributions paid on that income. For example, private sector earnings (including self-employment income) are reduced by 35 percent to take into account income taxes and social security contributions paid on that income. Wages to government officials, on the other hand, are reduced by only 27.5 percent since they do not pay the same amount of social security contributions as workers in the private sector.

Among the types of income not used for offset purposes are income from capital, rental income, private life insurance payments, private pensions, bonuses, benefits to war victims, and survivor pensions from other pension systems, such as social security benefits payable by other countries.

Transitional Provisions

The new law affects those survivor cases where the death takes place after December 31, 1985. The law provides for a 10-year transitional period before the offset provisions enter fully into effect. In addition, married couples where both are aged 50 or older before 1988 have the option of jointly deciding whether to remain under the former law or accept the provisions of the new law. This election, once made, is irreversible. If no election is made, the provisions of the new law automatically apply.

Transitional benefits vary, depending upon the dates of marriage and death as well as the sex of the beneficiary.

³As of June 26, 1986, 1 German Deutschmark equaled 45 cents in U.S. money.

⁴Average old-age pension data for years after 1984 are not yet available.

For widows, in cases where the marriage took place before 1986 and where the husband dies before 1996, the survivor benefit is paid in full during the first year of entitlement. In the second year, the offset is 10 percent, rather than the 40 percent the law ultimately envisages; in the third year, it is 20 percent; and, in the fourth, 30 percent. It is only in the fifth year that the full 40-percent offset applies against the survivor benefit. To make an informed decision about this option, the couple must not only consider the probabilities of survivorship but compute hypothetical pensions under the various assumptions, since the new law may be more beneficial in some cases even if both parties have substantial work histories.

Where the survivor has no income or pension, or the pension plus income is under DM 900, this transitional provision does not affect the widow since the offset would not otherwise apply. However, where both the husband and the wife each expect high retirement benefits by their own efforts, this provision can be extremely useful in the event the husband predeceases his wife. In such cases, the widow would then receive a survivor pension without any offset. Should the wife predecease the husband, however, the election of retaining rights under the prior law would force the widower to prove that the wife provided more than half of the family's income; otherwise, he would lose his right to a survivor pension completely.

Social Security Credits for Periods of Coverage for Child-Rearing

Under the provisions of the 1985 law, periods of social security coverage will now be granted to parents born after 1921 (age 65 in 1986) for periods of child-rearing, with up to 12 months of credit given for each child. For the purposes of this legislation, mothers as well as fathers are very broadly defined, including not only natural parents but also adoptive, step, and foster parents. Should the child be cared for jointly by both "parents," the social security credits are automatically granted to the mother. However, within 3 months of the child's birth, the parents may jointly notify the pension fund that they wish to have the father receive the entire 12 months of pension coverage instead of the mother. (Child-rearing credits may not be split between husband and wife for a particular child.) Once this option is exercised, it is not revocable. This election would be advantageous in cases where the wife returns to work shortly after childbirth and the husband is not working in covered employment during this period.

In cases where someone other than the natural parent has custody of the child, the gratuitous coverage is granted to the person who spends the most time caring for that child during the child's first year. For example, this situation could occur in cases of full orphans where the infant spent time with several relatives or in several foster homes. In such cases, the person who spent the most time with the child gets the credit. The law does not specify

standards of proof or methods of establishing who the person with actual custody was during this period. In most cases, with children and parents living, this would not be a problem. Even in cases of full orphans, the system of personal identification cards and registration of residences used in Germany (as well as in most European countries), backed by miscellaneous documents, testimony of parties, and so forth should not provide any undue problems in establishing the person with actual custody.

Where there is more than one child under 13 months at the same time, such as would occur with twins or closely spaced children, the period is extended by the time that there were two eligible infants in the person's care. This ensures a full 12-month credit for each child.

For the parent to receive credits for child-rearing, the family must generally have resided in the Federal Republic of Germany or West Berlin at the time the child was less than a year old. Exempted from this territorial requirement are families temporarily abroad for diplomatic or business reasons. Also exempted are persons of German extraction (Volksdeutsche) residing in the Federal Republic of Germany or Berlin who raised their children within the former borders of Germany as constituted on January 1, 1937. This provision thus grants child-rearing credits to German nationals who raised their children in what is now the German Democratic Republic.

These child-rearing credits may be used to establish initial entitlement to an old-age pension. Five years of work are required for eligibility to an old-age pension in the Federal Republic of Germany. Thus, a person with no work history but who has raised five children can now receive an old-age pension at age 65 based on these gratuitous credits. At current rates, this individual would now be eligible to receive a monthly pension of DM 125 based solely on these credits. In addition, the gratuitous credits may be used to increase pension size. For those people who have an earnings history and, hence, are entitled to an old-age pension irregardless of these credits, each year of gratuitous credits (1 year per child reared, and with each year's credit equal to 75 percent of the average covered wages reported for all blue- and white-collar workers in Germany for the year in which the child-rearing credits apply) increases the monthly pension by about DM 25 in most cases.

An anomalous situation occurred in cases where, contrary to the intent of the Legislature, the beneficiary could actually be harmed by the inclusion of child-rearing credits. Benefits in Germany are determined under a complex formula where only periods of covered earnings are used in determining the hypothetical average or "assessed wage" used in determining the benefit rate. This hypothetical "assessed wage" is then multiplied by 1.5 percent for each year of coverage. Including child-rearing cases where the other earnings are high could substantially lower the "assessed wage." Whenever the lowering of the "assessed wage" is not compensated for by the increase due to the added year(s) of coverage, the child-rearing credits,

rather than helping to increase, actually decreased the benefit amount. This was recognized by the Legislature almost immediately, and the law was amended to prevent any loss of benefits due to the inclusion of child-rearing periods. The amendment provides that, for any child-rearing periods that occurred prior to 1986, the benefit rate will be computed without the child-rearing credits if that calculation would lead to a higher benefit.⁵

Persons who opted for an early retirement pension (before age 65) or are receiving disability benefits at the time that the law enters into effect do not automatically receive a recomputation effective January 1986 for any child-rearing periods to which they would normally be entitled. These periods are added upon the next occurrence of an event that would affect eligibility or cause a recomputation of the benefit rate, such as the conversion of a disability benefit to an old-age benefit. In all cases, even if there has been no change in the beneficiary's status, the latest age at which child-rearing credits are applied is age 65. For example, a worker who chose early retirement before the 1986 effective date of the law and who is entitled to these credits will, barring a prior event, receive these credits and, therefore, an increase in benefits when he or she attains age 65 after 1985.

When an award involving these child-rearing credits is made, the pension fund is reimbursed from general revenues for the contributions due for the period of gratuitous credits. Although recalculation of benefits in payment for persons born before 1921 was considered by the Legislature, it was not adopted. While the new benefit will prove to be expensive, the Legislature felt that the immediate cost of retroactively granting this gratuitous coverage to all persons would be prohibitive. The cost of providing child-rearing credits under the new law has been estimated at DM 146 million (\$66 million) in the first year, rising to DM 1.25 billion (\$550 million) by the fifth year, and continuing to rise until it levels off after 10 years at an annual rate of DM 2.75 billion.⁶

⁵Sechstes Rentenversicherungs-Änderungsgesetz, 6 RVAndG, 24.4.1986; BGBI.I, p. 569.

⁶Finke/Franke/Heller, "Erziehungszeiten in der gesetzlichen Rentenversicherung," Die Angestelltenversicherung 1985, p. 102.

Readings in Social Security

The following is a sample of recent acquisitions of the Social Security Library in Baltimore.

Boskin, Michael J. **Too Many Promises: The Uncertain Future of Social Security.** Homewood, IL: Dow Jones-Irwin, 1986. 196 pages.

Argues that social security, despite its considerable accomplishments, is headed toward a deepening crisis unless we begin now to make fundamental reforms.

Browning, Robert X. **Politics and Social Welfare Policy in the United States.** Knoxville: University of Tennessee Press, 1986. 205 pages.

Analyzes differences in the growth of programs such as social security, public assistance, food stamps, and employment and training assistance using indicators of program initiatives, expenditures, and benefit levels.

Danziger, Sheldon H. and Daniel H. Weinberg, editors. **Fighting Poverty: What Works and What Doesn't.** Cambridge, MA: Harvard University Press, 1986. 418 pages.

Provides a balanced and wide-ranging analysis of anti-poverty policies since the 1960's, including both successes and failures.

Glennerster, Howard. **Paying for Welfare.** New York: Basil Blackwell, 1985. 273 pages.

Presents a wide-ranging but concise account of ways in which social services are financed in Britain. Analyzes ways in which services could be financed and describes recent changes to controlling public expenditure, grants to local authorities, and rates-capping.

Leutz, Walter N. et al. **Changing Health Care for an Aging Society: Planning for the Social Health Maintenance Organization.** Lexington, MA: Lexington Books, 1985. 252 pages.

Focuses on the development of a demonstration—the Social Health Maintenance Organization. Presents material on the need for an effective resource for the chronically ill, particularly the elderly, and a design for a comprehensive care delivery system.

Pifer, Alan, editor. **Our Aging Society, Paradox and Promise.** New York: W. W. Norton and Company, 1986. 483 pages.

What makes this volume unique is its broad focus: It is not so much about the older population, but about what's in store for everyone as America's age distribution shifts upward.

Rosenwaike, Ira. **The Extreme Aged in America: A Portrait of an Expanding Population.** Westport, CT: Greenwood Press, 1985. 253 pages.

This study looks at the projected expansion of the population aged 85 or older and assesses the reliability of available demographic data concerning them. International comparisons and population projections are also offered, and implications for national policy are carefully considered.